

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 12.03.2008

CORAM:

The Honourable Mr.Justice S.TAMILVANAN

A.S.No.801 of 1996

Kathirvelu .. Appellant/Plaintiff

-vs-

Anbazhagan ... Respondent/Defendant

Appeal filed against the Judgment and Decree, dated 25.08.1995 made in O.S.No.38 of 1993 on the file of the Sub Court, Chidambaram.

For Appellant : Mr.R.Subramanian

For Respondent : Mr.Srivatsamani

JUDGMENT

This appeal is directed against the judgment and decree dated 25.08.1995 made in O.S.No.38 of 1993 on the file of the Sub Court, Chidambaram.

2. The appellant herein was the plaintiff in the suit before the trial court. According to the appellant, the respondent having borrowed a sum of Rs.35,000/- on 01.03.1991, executed the suit promissory note, Ex.A.1, agreeing to repay the said sum together with interest at 18% p.a. Subsequently, the amount was not repaid and thereby the loan was not discharged. Hence, the appellant filed the suit seeking a decree against the respondent directing him to pay a sum of Rs.47,100/- with interest on the principal amount Rs.35,000/-at 18% p.a. and also for the costs.

3. The respondent herein as defendant has submitted in his written statement that he had not borrowed any amount from the appellant and executed the suit promissory note, as alleged by the appellant. According to him, he was only a subscriber of Chit Fund (P) Ltd., Bhuvanagiri run by the appellant herein. Being a subscriber, he had taken money in the auction held and the dues were subsequently settled by him and that his wife, A.Vijaya had also joined as a subscriber in a chit for the value of Rs.20,000/- in group No.BD for which, monthly subscription payable was Rs.500/- for 40 months. According to him, the chit transaction was over in the year 1987 and subsequently the respondent joined as a subscriber for chit amount of Rs.50,000/- in Group No.BF Chit No.6, for which monthly subscription was Rs.1,250/- for 40 months and that in the auction, he was the successful bidder and took the chit amount by reducing Rs.10,000/- in the value of the chit amount and for prompt payment of the balance for 18 months subscription of Rs.22,500/-, he executed a promissory note on 20.03.1990, which was registered at the office of the Registrar (Chit) , Bhuvanagiri. According to the respondent, the appellant had also obtained a blank promissory note signed by the respondent on the revenue stamps towards the chit transaction. He has further contended that though there was regular payment made by the respondent, there was a due of Rs.7,500/- and on 06.01.1992 the said amount of Rs.7,500/- was also paid by the respondent.

4. According to him, he handed over the blank signed promissory note format as security for the balance amount to be paid towards the chit transaction. However, the signed blank promissory note obtained from him was not returned by the appellant, even after the dues were paid. Hence, there is no attestation in the pro-note and no pre-suit notice was issued on him by the appellant before filing the suit. On the above grounds, the respondent had pleaded for dismissal of the suit. The trial court dismissed the suit, after considering the oral and documentary evidence and the arguments advanced by both sides.

5. On the side of the appellant, P.Ws.1 and 2 were examined and the suit promissory note was marked Ex.A.1 and on the side of the respondent, the defendant was examined as D.W.1 apart from marking the documents Exs.B1 to B8. On a perusal of the impugned judgment, it is seen that the trial court, considering the oral and documentary evidence, has held that Ex.A.1 was not a genuine promissory note executed by the respondent, supported by consideration, but held that it was a fabricated document and accordingly, the suit was dismissed.

6. The points for determination in this appeal are:-

(i) Whether the finding of the trial Court that Ex.A1 is not a genuine promissory note and also not supported by consideration is sustainable in law?

(ii) Whether the appellant is entitled to a decree as prayed for in the suit?

7. According to the appellant / plaintiff, the respondent / defendant had borrowed a sum of Rs.35,000/- from him on 01.03.1991 and executed the suit promissory note, Ex.A.1, agreeing to repay the said amount with 18% interest from the date of pro-note till the date of realisation.

8. In the written statement, the respondent herein has denied the plaint averments as false. According to the respondent, he had neither received a sum of Rs.35,000/- on 01.03.1991 from the appellant nor executed any promissory note on the said date for the aforesaid amount. He has further averred that the appellant was running a chit fund company, wherein the respondent was a subscriber along with his wife K.Vijaya. According to him, his wife Vijaya was a subscriber for the chit amount of Rs.20,000/-, for which the monthly subscription was Rs.500/- to be paid in 40 monthly instalments. He was a subscriber to Group No. BD Chit No.27 and according to him, the transaction was closed in the year 1987. The respondent was a subscriber in the chit for the value of Rs.50,000/- in Group No.BF, Chit No.6, for which monthly subscription at Rs.1,250/- had to be paid for 40 months and he was a successful bidder in the 22nd auction, whereby he took the amount, by reducing the chit amount to the tune of Rs.10,000/- and for the balance of 18 months, he had to pay Rs.22,500/-. As requested by the appellant, he had handed over a signed blank promissory note, apart from executing another promissory note for the said amount of Rs.22,500/- registered with the Office of the Registrar. According to the respondent, the aforesaid amount of Rs.50,000/- was regularly paid by him. Previously he had joined in the chit group for value of Rs.10,000/- and Rs.5,000/-, for which also he had handed over signed blank promissory notes in favour of the appellant, as requested by him. As there was a balance of Rs.7,500/- in the aforesaid chit for Rs.50,00/- on 26.10.1991, the appellant had sent a legal notice. When the respondent approached the appellant, informed the appellant that he would not take any action, if the subscription amount Rs.7,500/- is paid and according he paid the amount. Subsequently, due to the personal enmity, the appellant by filling up the blank promissory note already handed over by the respondent, filed the suit.

9. The clerk of the appellant and the appellant respectively were examined as P.W.1 and P.W.2 before the trial court, apart from marking Ex.A.1, promissory note. The document Ex.A.1 has been prepared in a printed format, there is no attestor to the document, though there is a column for the same. According to P.W.1, he had written the details in the printed format of Ex.A.1. He has admitted that he is a relative of the appellant, working as clerk under the appellant. In the cross-

examination on 18.08.1994, P.W.1 has further admitted that the respondent had been a subscriber for the chit amount of Rs.50,000/- run by the appellant. In the 22nd auction, he took the amount, after reducing Rs.10,000/- in the chit amount, for which, the monthly subscription payable was Rs.1,250/-. While, he was cross-examined on 23.06.1994, contrary to the above evidence, P.W.1 has deposed that he did not know whether the respondent had been a subscriber of the chit amount of Rs.50,000/- or not, but he has admitted Exs.B.1 and B.2 receipts, whereby the respondent had made payments on 09.07.1988 and 10.08.1988. Ex.B.1 is the passbook, relating to Rasi Chit Funds Private Ltd., run by the appellant, wherein the balance amount, as per the chit auction on 10.03.1990 is stated at Rs.22,500/- and as per this passbook, it is seen that the respondent has regularly paid the subscription amount.

10. According to P.W.2, under Ex.A.1, promissory note, the respondent had received Rs.35,000/- and agreed to repay the amount with 18% interest. In the cross-examination, he has stated that he had no license to run money lending business, though his brother was having license to run the business. He has admitted that he was doing money lending business without having a valid license.

11. As the appellant has admitted that he was running money lending business, at least he could have produced his books of accounts, in order to substantiate his claim. He has further admitted that the respondent was the successful bidder in the 22nd auction for the chit amount of Rs.50,000/-, payable for 40 months at Rs.1,250/- p.m. For the balance of 18 months subscription of Rs.22,500/-, he had obtained a promissory note from the respondent and according to him, the same was not registered, though the same is mandatory as per Chit Funds Act. According to him, the respondent had paid 33 instalments and the balance was Rs.7,500/- for 7 instalments, for which, legal notice was issued by him through his counsel, as per Ex.B.5. Subsequently, the respondent paid the amount as per Exs.B.6 and B.7.

12. In the copy of the legal notice issued by the appellant to the respondent, marked as Ex.B.5, it has been averred that the respondent had borrowed a sum of Rs.7,500/- on 11.03.1991 from the appellant and executed a promissory note to repay the same with interest, but in the evidence, the appellant, who was examined as P.W.2 has admitted that the said averments contained in his legal notice is incorrect. He has further admitted that even after the complete discharge of the dues by the respondent, the registered pro-note, dated 20.03.1990 marked as Ex.B.4 was not cleared by him.

13. Learned counsel appearing for the respondent contended that the appellant, who is running chit transaction has admittedly not followed the mandatory provisions under the Chit Funds Act and other provisions of law.

14. Admittedly, there is no pre-suit notice issued by the appellant to the respondent for the reasons best known to him. As held by the trial court, there is no attestation to Ex.A.1, promissory note to establish the execution, as well as passing of consideration thereon. The appellant has not produced any other supporting documents, such as account books maintained in the regular course of his business to establish that there was sufficient funds to make the payment of Rs.35,000/- on 01.03.1991, the date of the promissory note and also the corresponding entries made in the books of accounts maintained by the appellant. It is seen that the appellant has not disclosed all the relevant material facts in the plaint. Further, the oral and documentary evidence adduced on either side would show that the appellant had given only self contradictory versions before the trial court and the same has been discussed in detail by the trial court in the impugned judgment.

15. Had the pro-note, Ex.A.1 related to the chit transaction between the appellant and the respondent herein, normally, he could have issued pre-suit notice before filing the suit. It is an

admitted fact that for the recovery of Rs.7,500/- towards the chit transaction, legal notice Ex.B.5 has been issued on the respondent. Immediately after the issuance of notice, the respondent paid the amount and obtained receipts, though the registered pro-note obtained from the respondent was not released to the appellant. The aforesaid fact has been admitted in the evidence by the appellant, as P.W.2.

16. As admitted by the appellant, he was running money lending business, without obtaining license. Though, pre-suit notice is not mandatory, in the instant case, the non-issuance of the notice shows the conduct of the appellant. As the appellant was running money lending business, he could have produced at least books of accounts to substantiate his contention that he had sufficient funds on 01.03.1991, the date of promissory note, Ex.A.1 and also for having made corresponding entries in his books of accounts after the payment. Though it was raised, even in the appeal the said documents were not marked.

17. As per Section 118(a) of the Negotiable Instruments Act, 1881, when the execution of the instrument is admitted, it has to be legally presumed that proper consideration has been passed on the instrument, until the contrary is proved by the person disputing the same. Hence, it is only a rebuttable presumption. In the instant case, as found by the court below, there are various vital circumstances to draw rebuttable presumption against the appellant.

18. The respondent had not admitted the execution of the promissory note, Ex.A.1, though he has admitted his signature available in the said document. As he has admitted his signature available in Ex.A.1, as per the Indian Evidence Act, the burden is upon him to establish that he had signed, while it was a blank format. According to the respondent, the appellant had obtained his signature in the blank promissory note formats, while he was a subscriber and successful bidder in the chit auction and he handed over the signed promissory note to the appellant as security for prompt payment of future subscriptions.

19. As per Section 12 of Chit Funds Act, 1982, there is prohibition of transacting business other than chit business by a company carrying on chit business without obtaining general or special permission from the Government. In the instant case, as per the evidence of P.W.1 and P.W.2, it is clear that the appellant himself was running chit company as Managing Director, the same has been specifically stated in Ex.B.5, legal notice, relating to the chit transaction. The appellant has also admitted that he was running money lending business, without obtaining license. Admittedly, the respondent was a subscriber in the chit transaction run by the appellant herein and pro-note was obtained from him in connection with the chit transaction. In such circumstances, non-production of account books by the appellant would lead to a rebuttable presumption against the appellant under Section 118 of the Negotiable Instruments Act.

20. Even in this appeal, after knowing the defence raised by the respondent, the appellant has not produced his books of accounts to establish that he had sufficient funds to lend money under Ex.A.1 and also the entries made in the books of accounts for the payment made to the respondent. In order to establish the rebuttable presumption, the respondent has produced the pass book of Rasi Chit Funds (P) Ltd., run by the appellant as Ex.B.1. As per this document, he was the successful bidder in the auction that had taken place on 10.03.1990 and an amount of Rs.22,500/- was due and payable by him. The entries for various payment made by him are found in Ex.B.1 and a specific entry available in the pass book has been marked as Ex.B.2.

21. As per Ex.B.5, legal notice, the respondent was asked to pay a sum of Rs.7,500/- stating that he had obtained the said loan on 11.03.1991 by executing the promissory note in favour of the appellant herein, as Managing Director, Rasi Chit Funds (P) Ltd.,. The appellant, who was examined as P.W.2

has admitted that after the notice, the amount Rs.7,500/- was paid by the respondent and the matter was settled. He has also admitted that on 11.03.1991, no amount was borrowed by the respondent by executing any promissory note, promising to repay Rs.7,500/- with 24% interest, as alleged by him in his notice, Ex.B.5. It is seen that the appellant had sent the legal notice, admittedly containing false and incorrect particulars. However, the respondent immediately paid the amount, since he had to pay the amount towards the chit transaction. In such circumstances, had there been Rs.35,000/- due and payable by the respondent under Ex.A.1, promissory note, the appellant could have normally issued a legal notice, but no pre-suit notice was issued by the appellant. Admittedly, there is no attester to Ex.A.1 to speak about the alleged execution and also passing of consideration. The aforesaid factors are discussed in detail by the court below, only based on the evidence, the Court below held that Ex.A.1 document has been created by the appellant, by using the signature available in the blank format, otherwise, the appellant could have produced his books of accounts to substantiate the passing of consideration, apart from issuing pre-suit notice.

22. As per Section 3(1) of the Tamil Nadu Money-Lenders Act, 1957, no person shall, on and after the date of commencement of the Act shall carry on or continue to carry on business as a money-lender, without holding license and the person holding license shall also run the same in accordance with the terms of such license. As per Section 9 of the said Act, the Money-lender must keep books of accounts and maintain regular records, relating to the money lending transaction and also give receipts for every payment received by the money-lender. Here in this case, admittedly, the appellant was running money lending business without having any license and no books of accounts or other connected records were produced to substantiate the suit claim. As submitted by the learned counsel for the respondent, as the claim is not genuine, the appellant has not followed the mandatory provisions and produced his books of accounts and other relevant documents, which are needed to establish the claim of the appellant.

23. Considering the facts and circumstances, I am of the view that there is no error or infirmity in the impugned Judgment and Decree passed by the court below, so as to interfere with the same and accordingly, the points for determination are answered in favour of the respondent and against the appellant.

24. In the result, the appeal fails and accordingly the same is dismissed. However, there is no order as to costs.

12-03-2008

Index : Yes

Internet : Yes

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To

The Sub Court

Chidambaram.

S.TAMILVANAN,J.

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Judgment in A.S.No.801 of 1996

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